51 **S.B. CIVIL MISC. APPEAL NO.128/2007.**
Smt. Marti & Ors. Vs. Roda & Anr.

Date of Order :: 16th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sandeep Sarupariya, for the appellants.

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BY THE COURT:

Heard learned counsel.

This is claimants' appeal seeking enhancement over the amount of compensation awarded by the Tribunal in the sum of Rs.3,42,500/- to the wife and seven children of the vehicular accident victim Manna Lal, said to be about 45 years in age, and earning as a mason.

Learned counsel for the appellants contends that the Tribunal has been in error in awarding lower side amount towards loss of contribution after deducting one-third from the estimated income of the deceased without considering larger family to support where deduction on personal expenditure ought to have been lesser than one-third. Learned counsel further submits that in view of the age of the deceased at 45 years, and not above 45 years, the Tribunal has been in error in applying multiplier of 13 only; and proper multiplier of 15 ought to have been applied.

Having given a thoughtful consideration to the submissions made on behalf of the appellants and having examined the award impugned, this Court is clearly of opinion that the award in question does not warrant any interference in appeal.

So far the age of the victim is concerned, the claimants have stated his age at 45 years in the claim application and so is the age stated in the postmortem report. There is no evidence, oral and documentary, on record even suggestive of the fact that the age of the deceased was substantially below 45 years so as to consider application of multiplier of 15 or any multiplier higher than 13.

Moreover, in view of the composition of the family consisting of wife and seven children, the eldest said to be about 18 years in age and for want of any other evidence, on a reasonable inference, the Tribunal cannot be faulted with for taking the age of the deceased at 45 years. The deceased was earning his livelihood while working as a mason and the Tribunal has taken his monthly income at Rs.3,000/-; and after deduction of one-third wherefrom, has taken loss of contribution for the claimants at Rs.2,000/- per month. Of course, the multiplicand so adopted by the Tribunal appears to be standing a bit on the lower side particularly in view of the larger family consisting of wife and seven children but when

examined in the context of the overall facts and circumstances of the case and of application of maximum side multiplier, this Court is of opinion that the amount assessed by the Tribunal towards loss of contribution cannot be said to be too low or inadequate.

The Tribunal has allowed non-pecuniary loss at Rs.27,500/- while allowing Rs.10,000/- towards loss of consortium to the wife and Rs.2,500/- to each of the children towards loss of love, affection and guidance of their father. Such amount towards non-pecuniary loss is not insufficient or inadequate. The Tribunal has also allowed Rs.2,000/- towards funeral expenses and Rs.1,000/- towards transportation.

In the ultimate analysis, the award made by the Tribunal in the sum of Rs.3,42,500/-, though moderate, cannot be said to be too low or grossly inadequate so as to warrant interference in appeal at the instance of the claimants.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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